

ESTTA Tracking number: **ESTTA761019**

Filing date: **07/28/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ICON Health & Fitness, Inc.		
Entity	Corporation	Citizenship	Delware
Address	1500 S 1000 W Logan, UT 84321 UNITED STATES		

Attorney information	LaShel Shaw Parr Brown Gee & Loveless 101 South 200 East, Suite 700 Salt Lake City, UT 84111 UNITED STATES lshaw@parrbrown.com, ghesse@parrbrown.com Phone:8015327840		
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Applicant Information

Application No	86893495	Publication date	06/28/2016
Opposition Filing Date	07/28/2016	Opposition Period Ends	07/28/2016
Applicant	Ingram Micro, Inc. 3351 Michelson Drive Irvine, CA 92612 UNITED STATES		

Goods/Services Affected by Opposition


Class 041. First Use: 2015/07/00 First Use In Commerce: 2015/07/00 All goods and services in the class are opposed, namely: Education and training services, namely, providing classes, seminars, workshops, labs, presentations, virtual classes, virtual labs, web-based training, cloud-based training, online training, tutorial sessions, mentoring, and face to face training, and providing a web site featuring non-downloadable instructional videos, all in the field of technology relating to cloud, data, networking, infrastructure, operating systems, database security, servers, software, data storage, technology solutions, and use of mobile devices
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	4604633	Application Date	12/18/2013
Registration Date	09/16/2014	Foreign Priority Date	NONE

Word Mark	IFIT
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2010/06/06 First Use In Commerce: 2010/06/06 Web-based, downloadable software for the collection, storage and display of personal performance data from various fitness activities, display of nutritional information and fitness and athletic programs and workouts, software for tracking, monitoring and planning fitness training activities

U.S. Registration No.	4500591	Application Date	02/21/2013
Registration Date	03/25/2014	Foreign Priority Date	NONE
Word Mark	IFIT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2012/06/04 First Use In Commerce: 2012/06/04 An application service provider (ASP) featuring software for use with mobile devices, tablet, and computers for tracking, storing, and displaying personal performance data for various fitness activities; ASP featuring application programming interface (API) software for connecting and interacting with software applications on mobile devices, tablets, and computers to track, store, and display personal performance data for various fitness activities		

U.S. Registration No.	4450213	Application Date	12/27/2012
Registration Date	12/17/2013	Foreign Priority Date	NONE
Word Mark	IFIT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2012/10/01 First Use In Commerce: 2012/10/01 Personal fitness training services and consultancy; Physical fitness instruction; Physical fitness training services; Providing an on-line computer database featuring information regarding exercise and fitness; Providing information in the field of exercise training

U.S. Registration No.	2618509	Application Date	02/11/1999
Registration Date	09/10/2002	Foreign Priority Date	NONE
Word Mark	IFIT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00 fitness and exercise machines Class 041. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00 educational services, namely, conducting personal training in the field of health and fitness		

U.S. Registration No.	2466474	Application Date	07/21/1999
Registration Date	07/03/2001	Foreign Priority Date	NONE
Word Mark	IFIT.COM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00		

	providing information and consultation services in the field of exercise equipment and personal health, fitness and nutrition by means of a global computer network
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Attachments	86147433#TMSN.png(bytes) 85856673#TMSN.png(bytes) 85811286#TMSN.png(bytes) 75638662#TMSN.png(bytes) Notice of Opposition FIT Ingram Micro w Exhibits.pdf(1060362 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/LaShel Shaw/
Name	LaShel Shaw
Date	07/28/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86893495 (FIT)

Filed: February 1, 2016

Published for Opposition: June 28, 2016

ICON HEALTH & FITNESS, INC.,)	
)	
Opposer,)	
)	
v.)	<u>NOTICE OF</u>
)	<u>OPPOSITION</u>
)	
INGRAM MICRO, INC.,)	
)	
Applicant.)	

ICON Health and Fitness, Inc. (“ICON”), a corporation organized and existing under the laws of Delaware with a place of business at 1500 South 1000 West, Logan, Utah 84321, believes that it will be damaged by the issuance of a registration for the alleged mark shown in Application Serial No. 86893495 for the mark FIT. ICON hereby opposes the same pursuant to Section 13(a) of the Lanham Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1046(1).

As grounds for opposition, ICON alleges as follows:

1. ICON is one of the world’s largest manufacturers of exercise and fitness equipment and sells exercise and fitness products and services throughout Asia, Europe, and North and South America, including throughout the United States.

2. ICON is the owner of five relevant valid and subsisting U.S. Trademark Registrations on the Principal Register in the U.S. Patent and Trademark Office (“PTO”):

Mark	No.	Date Issued	Goods & Services
IFIT	4,604,633	9/16/2014	Web-based, downloadable software for the collection, storage and display of personal performance data from various fitness activities, display of nutritional information and fitness and athletic programs and workouts, software for tracking, monitoring and planning fitness training activities.
IFIT	4,500,591	3/25/2014	An application service provider (ASP) featuring software for use with mobile devices, tablet, and computers for tracking, storing, and displaying personal performance data for various fitness activities; ASP featuring application programming interface (API) software for connecting and interacting with software applications on mobile devices, tablets, and computers to track, store, and display personal performance data for various fitness activities.
iFIT	4,450,213	12/17/2013	Personal fitness training services and consultancy; Physical fitness instruction; Physical fitness training services; Providing an on-line computer database featuring information regarding exercise and fitness; Providing information in the field of exercise training.
IFIT.COM	2,466,474	4/3/2001	Providing information and consultation services in the field of exercise equipment and personal health, fitness and nutrition by means of a global computer network.
IFIT	2,618,509	9/10/2002	Fitness and exercise machines

Collectively these five marks shall be referred to herein as the “ICON IFIT Marks.”

3. ICON has used the mark protected by U.S. Trademark Registration No. 4,604,633 in interstate commerce in the United States continuously since at least June 6, 2010 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of web-based, downloadable software for the collection, storage and display of personal performance data from various fitness activities, display of nutritional information and fitness and athletic programs and workouts, software for tracking, monitoring and planning fitness training activities. Attached as Exhibit A is a true and correct printout of the PTO’s information about U.S. Trademark Registration No. 4,604,633, which was issued by the PTO on September 16, 2014.

4. ICON has used the mark protected by U.S. Trademark Registration No. 4,500,591 in interstate commerce in the United States continuously since at least June 4, 2012 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of an application service provider (ASP) featuring software for use with mobile devices, tablet, and computers for tracking, storing, and displaying personal performance data for various fitness activities and ASP featuring application programming interface (API) software for connecting and interacting with software applications on mobile devices, tablets, and computers to track, store, and display personal performance data for various fitness activities. Attached as Exhibit B is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 4,500,591, which was issued by the PTO on March 25, 2014.

5. ICON has used the mark protected by U.S. Trademark Registration No. 4,450,213 in interstate commerce in the United States continuously since at least October 1, 2010 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of personal fitness training services and consultancy, physical fitness instruction, physical fitness training services, an on-line computer database featuring information regarding exercise and fitness, and information in the field of exercise training. Attached as Exhibit C is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 4,450,213, which was issued by the PTO on December 17, 2013.

6. ICON has used the mark protected by U.S. Trademark Registration No. 2,466,474 in interstate commerce in the United States continuously since at least February 1999 in connection with the provision, sale, marketing, advertising, and promotion of information and consultation services in the field of exercise equipment and personal health, fitness and nutrition by means of a global computer network. Attached as Exhibit D is a true and correct printout of

the PTO's information about U.S. Trademark Registration No. 2,466,474, which was issued by the PTO on July 3, 2001.

7. ICON has used the mark protected by U.S. Trademark Registration No. 2,618,509 in interstate commerce in the United States continuously since at least February 1999 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising, and promotion of fitness and exercise machines. Attached as Exhibit E is a true and correct printout of the PTO's information about U.S. Trademark Registration No. 2,466,474, which was issued by the PTO on September 10, 2002.

8. As a result of its widespread, continuous, and exclusive use of the ICON IFIT Marks to identify its goods and services with ICON as their source, ICON owns valid and subsisting federal statutory and common law rights to the ICON IFIT Marks.

9. The ICON IFIT Marks are distinctive to both the consuming public and within the exercise and fitness industry.

10. ICON has expended substantial time, money, and resources in marketing, advertising, and promoting the goods and services offered under the ICON IFIT Marks, including, among other things, television, radio, newspaper, magazine, internet, social media, and other media.

11. ICON's promotional efforts have led to ICON's patrons, potential patrons, and the general public coming to know and recognize the ICON IFIT Marks and associate them with ICON and its goods and services. ICON has therefore built up extensive, valuable goodwill in the ICON IFIT Marks.

12. As a result of their distinctiveness and widespread use and promotion throughout the United States, the ICON IFIT Marks are famous trademarks within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. 1125(c).

13. Upon information and belief, Applicant Ingram Micro, Inc. (“Ingram”), with an address at 3351 Michelson Drive, Suite 100, Irvine, California 92612, on February 1, 2016 filed Trademark Application Serial No. 86893495 to register the proposed mark FIT for the following goods and services in International Class 041:

Education and training services, namely, providing classes, seminars, workshops, labs, presentations, virtual classes, virtual labs, web-based training, cloud-based training, online training, tutorial sessions, mentoring, and face to face training, and providing a web site featuring non-downloadable instructional videos, all in the field of technology relating to cloud, data, networking, infrastructure, operating systems, database security, servers, software, data storage, technology solutions, and use of mobile devices.

14. The ICON IFIT Marks have priority over Applicant’s mark because Petitioner’s first-use and registration dates for the ICON IFIT Marks predate the filing date of Applicant’s application or any other date on which Ingram may rely for purposes of priority.

15. Applicant’s mark FIT is confusingly similar to the ICON IFIT Marks, as it differs from the IFIT Marks by only a single character. As a result, Applicant’s mark is substantially similar to the IFIT Marks in sound, spelling, appearance, and connotation, and creates a similar commercial impression.

16. The likelihood of confusion is further heightened because the goods and services covered by Applicant’s Application Serial No. 86893495 are so broad as to cover services that are the same as or related to the services covered by the registrations for ICON’s IFIT Marks.

FIRST GROUND FOR OPPOSITION – LIKELIHOOD OF CONFUSION

17. The allegations of paragraphs 1-16 above are incorporated by reference into this First Ground of Opposition.

18. The proposed mark is barred from registration because it consists of or compromises a mark which so resembles ICON's previously used and registered ICON IFIT Marks as to be likely, when used in connection with the alleged goods and services of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

SECOND GROUND FOR OPPOSITION - DILUTION

19. The allegations of paragraphs 1-16 above are incorporated by reference into this Second Ground of Opposition

20. Petitioner's ICON IFIT Marks are distinctive and a "famous mark" within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

21. The ICON IFIT Marks became distinctive and famous prior to the filing date of Applicant's application or any other date on which the Respondent may rely for purposes priority.

22. Applicant's Application Serial No. 86893495 will impair the distinctiveness and cause dilution by blurring of, and thereby damage, Petitioner's famous ICON IFIT Marks in violation of 15 U.S.C. § 1125(c). Accordingly, pursuant to 15 U.S.C. § 1063, the proposed FIT mark is not entitled to registration.

WHEREFORE, Petitioner respectfully prays that its opposition be sustained and that registration to the pursuant to Applicant's Application Serial No. 86893495 be refused.

Dated: July 27, 2016

Respectfully submitted,
PARR BROWN GEE & LOVELESS

/LaShel Shaw/

Gregory M. Hess
LaShel Shaw
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Attorneys for ICON Health and Fitness, Inc.

EXHIBIT A



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IFIT

Word Mark	IFIT
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Web-based, downloadable software for the collection, storage and display of personal performance data from various fitness activities, display of nutritional information and fitness and athletic programs and workouts, software for tracking, monitoring and planning fitness training activities. FIRST USE: 20100606. FIRST USE IN COMMERCE: 20100606
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86147433
Filing Date	December 18, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 1, 2014
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	4604633
Registration Date	September 16, 2014
Owner	(REGISTRANT) ICON Health & Fitness, Inc. CORPORATION DELAWARE 1500 South 1000 West Logan UTAH 84321
Assignment Recorded	ASSIGNMENT RECORDED

**Attorney of
Record** Bryan G. Pratt
**Prior
Registrations** 2466474;2618509
Type of Mark TRADEMARK
Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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Attorney of Record Richard K.C. Chang II

Type of Mark SERVICE MARK

Register PRINCIPAL

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iFIT

Word Mark	IFIT
Goods and Services	IC 041. US 100 101 107. G & S: Personal fitness training services and consultancy; Physical fitness instruction; Physical fitness training services; Providing an on-line computer database featuring information regarding exercise and fitness; Providing information in the field of exercise training. FIRST USE: 20121001. FIRST USE IN COMMERCE: 20121001
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85811286
Filing Date	December 27, 2012
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 1, 2013
Registration Number	4450213
Registration Date	December 17, 2013
Owner	(REGISTRANT) ICON Health & Fitness, Inc. CORPORATION DELAWARE 1500 South 1000 West Logan UTAH 84321
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Richard K.C. Chang II

Prior Registrations 2466474;2618509
Type of Mark SERVICE MARK
Register PRINCIPAL
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(LAST LISTED OWNER) ICON HEALTH & FITNESS, INC. CORPORATION DELAWARE 1500 SOUTH 1000 WEST LOGAN UTAH 84321

Assignment Recorded ASSIGNMENT RECORDED**Attorney of Record** Richard K.C. Chang II**Type of Mark** SERVICE MARK**Register** PRINCIPAL**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110923.**Renewal** 1ST RENEWAL 20110923**Live/Dead**

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IFIT

Goods and Services

IC 028. US 022 023 038 050. G & S: fitness and exercise machines. FIRST USE: 19990200. FIRST USE IN COMMERCE: 19990200

IC 041. US 100 101 107. G & S: educational services, namely, conducting personal training in the field of health and fitness. FIRST USE: 19990200. FIRST USE IN COMMERCE: 19990200

Standard Characters Claimed**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

Serial Number 75638662**Filing Date** February 11, 1999**Current Basis** 1A**Original Filing Basis** 1B**Published for Opposition** January 11, 2000**Change In Registration** CHANGE IN REGISTRATION HAS OCCURRED**Registration Number** 2618509**Registration Date** September 10, 2002**Owner** (REGISTRANT) ICON IP, INC. CORPORATION DELAWARE 1500 SOUTH 1000 WEST LOGAN UTAH 84321

(LAST LISTED OWNER) ICON HEALTH & FITNESS, INC. CORPORATION DELAWARE 1500 SOUTH 1000 WEST LOGAN UTAH 84321

Assignment Recorded ASSIGNMENT RECORDED**Attorney of Record** Bryan G. Pratt

Type of Mark	TRADEMARK. SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20121107.
Renewal	1ST RENEWAL 20121107
Live/Dead Indicator	LIVE

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2016, I caused a true and correct copy of the foregoing Notice of Opposition to be served by first-class U.S. Mail on the following correspondent of record for applicant:

Holiday W. Banta
ICE MILLER, LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282

/LaShel Shaw/

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